Filed 2/25/05 P. v. Fraley CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. GREGORY LEE FRALEY, Defendant and Appellant.	F044439 (Super. Ct. No. BF102660A) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Kern County. Clarence Westra, Jr., Judge.

Erik Nils Larson, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, J. Robert Jibson and Charles Fennessey, Deputy Attorneys General, for Plaintiff and Respondent.

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[*]Before Vartabedian, Acting P.J., Gomes, J. and Dawson, J.

A jury convicted appellant, Gregory Lee Fraley, of possession of stolen property (Pen. Code, § 496),[1] possession of a firearm by a felon (§ 12021, subd. (a)), and destruction of evidence (§ 135). On November 26, 2003, the court sentenced Fraley to the aggravated three-year term on his possession of stolen property conviction, a concurrent three-year term on the possession of a firearm conviction, and a concurrent six-month term on the destruction of evidence conviction. On March 12, 2004, the court recalled the sentence and resentenced Fraley to the 16-month mitigated term on the possession of stolen property conviction, a concurrent 16-month term on Fraley's possession of a firearm offense and a concurrent term on his destruction of evidence conviction. On appeal, Fraley contends: 1) the court erred when it denied his motion to quash the search warrant; and 2) the evidence is insufficient to sustain his conviction for possession of stolen property. We will affirm.

FACTS

The Suppression Motion

Detective Wally Whitaker submitted a statement of probable cause for the issuance of a warrant that authorized the search of Fraley's mobile home. In this statement, Whitaker recounted his relevant experience: during the past 11 years, he enforced narcotics laws in California; he had 144 hours of training related to narcotics trafficking. Whitaker further alleged that within 10 days of the date the affidavit was executed he was contacted by a confidential informant, who during the same 10-day period, observed a man identified as "Gregg" at Fraley's residence in possession of methamphetamine in a quantity apparently possessed for purposes of sales. The confidential informant was not paid for the information he provided. However, he received consideration in a pending case. Whitaker further stated that he knew that the confidential informant was familiar with narcotics and dangerous drugs, including their

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[1] All further statutory references are to the Penal Code, unless otherwise indicated.

appearance and method of packaging, due to the informant's past experience with narcotics and dangerous drugs.

The affidavit also stated that within the past 60 days the informant furnished another detective with information that, through investigation, led to the arrest of one person for dangerous drug violations and the seizure of narcotics.

On July 8, 2003, Fraley filed a motion to suppress contending that the warrant was issued without probable cause. He contended the affidavit was replete with conclusions, the information was not corroborated by law enforcement, and the affidavit did not include the informant's track record, except for one incident where information from the informant led to an arrest.

On July 22, 2003, the court heard and denied Fraley's motion.

The Trial

On May 29, 2003, Bakersfield police officers, including detectives Whitaker and Chad Jackman, served the warrant at Fraley's mobile home. After gaining entry into the mobilehome, the officers found Fraley in the restroom that was attached to his bedroom. When they entered the bedroom, the toilet in the restroom was completing its flush cycle. Next to the toilet, the officers found a gym bag with a plastic baggie with an unidentified residue. Fraley told the officers that the baggie contained less than a gram of heroin, which he possessed for his personal use, and that he flushed it down the toilet. The officers also recovered a digital scale, a cell phone, and $2,700 in cash from Fraley's room.

The officers found a partially disassembled all terrain vehicle (ATV) in the yard and a starter pistol and several firearms in a locked shed on the property. The ATV and

the starter pistol were later determined to have been stolen from William Bart's garage shortly before Christmas 2002.[2]

Fraley testified that he purchased the partially disassembled ATV from Germaine Maca, a man from whom he had purchased other items on prior occasions. Although Maca did not give Fraley a certificate of ownership (pink slip), he did give him a bill of sale that listed the ATV's serial number and showed that Fraley purchased the ATV from Maca on March 5, 2003, for $350. Prior to purchasing the ATV, Fraley asked Maca whether the ATV was stolen and Maca told him it was not. Fraley further testified that, although he had previously owned dirt bikes, he never had pink slips for any of them.

DISCUSSION

The Motion to Suppress

Fraley contends the warrant that authorized the search of his mobile home was issued without probable cause because: 1) the informant who provided information was unreliable; 2) the information provided by the informant was conclusory; 3) the affiant officer did not include the informant's past failure rate; and 4) the officers did not corroborate the information provided by the informant. Thus, according to Fraley, the court erred when it denied his motion to suppress. We disagree.

Our role as a reviewing appellate court is established. "We summarize the relevant legal principles governing an appellate challenge to the validity of a search warrant and the search conducted pursuant to it. The question facing a reviewing court asked to determine whether probable cause supported the issuance of the warrant is whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing. [Citations.] 'The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the

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[2] Fraley's possession of stolen property charge was based only on his possession of the ATV.

circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.' [Citation.] In a pre-Proposition 8 case, we stated: 'In determining the sufficiency of an affidavit for the issuance of a search warrant the test of probable cause is approximately the same as that applicable to an arrest without a warrant, . . . [citations], namely, whether the facts contained in the affidavit are such as would lead a man of ordinary caution or prudence to believe, and conscientiously to entertain, a strong suspicion of the guilt of the accused.' [Citations.] The magistrate's determination of probable cause is entitled to deferential review. (*Illinois v. Gates* [1983] [462 U.S. 213, 236. 76 L.Ed.2d 527]; see *Skelton v. Superior Court* [1969] [1 Cal.3d 144, 153] [magistrate's determination 'is to be sustained by reviewing courts as long as there was a "substantial basis" for his conclusion that the legitimate objects of the search were "probably present" on the specified premises'].)" (*People v. Kraft* (2000) 23 Cal.4th 978, 1040-1041.)

With this framework in mind, we examine the affidavit, as presented to the issuing magistrate, to determine whether there was a substantial basis to support the issuance of the warrant, which thus supports the trial court's decision to deny appellant's motion to suppress. Our review of the ruling of the trial court is not a de novo one, as we are constrained, as was the trial court, to pay great deference to the magistrate's probable cause determination. (*People v. Tuadles* (1992) 7 Cal.App.4th 1777, 1783.) This means we will not review the affidavit and interpret it in a hypertechnical manner, but will instead apply the same common sense approach the magistrate was required to apply in our determination of whether there is a " 'substantial basis for . . . conclud[ing]' that a search would uncover evidence of wrongdoing, ..." (*Illinois v. Gates*, *supra*, 462 U.S. at p. 236.)

"In reviewing the magistrate's determination to issue the warrant, it is settled that 'the warrant can be upset only if the affidavit fails as a matter of law [under the

applicable standard announced in *Illinois v. Gates*, *supra*, 462 U.S. at p. 238] to set forth sufficient competent evidence supportive of the magistrate's finding of probable cause, since it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by affidavit as well as when presented by oral testimony. [Citations.]' [Citation.]" (*People v. Hobbs* (1994) 7 Cal.4th 948, 975.)

Here, the affidavit stated that, within 10 days prior to the affidavit being completed, a confidential informant advised Detective Whitaker that during that same 10-day period the informant had seen Fraley in his residence in possession of an unspecified amount of methamphetamine which Fraley possessed for sale. The affidavit also stated that the affiant was aware that the informant was familiar with the appearance of dangerous drugs and their method of packaging due to the informant's past experience with narcotics and dangerous drugs; within the last 60 days the informant provided information that led to the arrest of one person for drug violations and the recovery of dangerous drugs. Finally, the affidavit disclosed that in exchange for the information the informant was given consideration in a pending criminal case. Although this is a close case, "doubtful or marginal cases should be resolved in favor of upholding the warrant. (*United States v. Ventresca* (1965) 380 U.S. 102; *People v. Superior Court (Corona)* (1981) 30 Cal.3d 193, 207.)" (*People v. Tuadles*, *supra*, 7 Cal.App.4th at p. 1784.) We therefore conclude that, under the totality of the circumstances detailed above, there was a substantial basis for the magistrate to conclude there was probable cause to believe Fraley was trafficking in methamphetamine

In reaching this conclusion, we reject Fraley's assertion that the affidavit was inadequate because the informant was unreliable per se or because the police did not corroborate the information he provided. An informant's tip can be sufficient to establish probable cause if the informant "has a track record of supplying reliable information" or if the tip "is corroborated by independent evidence." (*United States v. Williams* (8th Cir. 1993) 10 F.3d 590, 593.) Here, the informant provided accurate information on one prior

occasion that led to the arrest of one person and the recovery of narcotics. We find this sufficient to establish the informant's reliability even in the absence of independent police corroboration. (Cf. *People v. Dumas* (1973) 9 Cal.3d 871, 876 [affidavit was sufficient to establish informant's reliability where it stated that information received from informant on single occasion led to arrest of suspect and suspect being held to answer on charges]; *People v. Gray* (1976) 63 Cal.App.3d 282, 288 ["While one past incident showing reliability is not sufficient to compel a magistrate to accept the reported observations of an informant [as] true, he does not abuse his discretion if he arrives at that conclusion"].)

We also reject Fraley's contention that the information provided by the informant was too conclusory to establish probable cause. In order to determine whether the affidavit established probable cause, we must look to the totality of the circumstances. (*Illinois v. Gates*, *supra*, 462 U.S. at p. 238) Although information provided by the informant was somewhat conclusory, the magistrate could reasonably have found that the informant was reliable. Moreover, the officer affiant averred that he knew the informant was familiar with narcotics and dangerous drugs and the manner in which they were packaged. In view of this, we find that the conclusory nature of some of the information provided by the informant did not defeat the showing of probable cause.

Finally, we reject Fraley's challenge to the warrant on the basis that it did not contain information regarding the informant's failure rate. Fraley did not cross-examine the officer affiant in the trial court to determine if such information existed. Nor does he point to any evidence in the record to show that the informant ever provided any information that proved to be inaccurate. Accordingly, we find that the record supports the magistrates finding of probable cause. It follows that the trial court did not err when it denied Fraley's suppression motion.

The Possession of Stolen Property Conviction

Fraley contends the evidence failed to establish that he was aware the ATV he purchased from Maca was stolen. He specifically argues that the bill of sale shows he was a "bonafide purchaser for value," requiring reversal. Thus, according to Fraley, the evidence is insufficient to sustain his conviction for possessing stolen property.

"In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence--evidence that is reasonable, credible and of solid value--such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Kraft, supra,* 23 Cal.4th 978, 1053.)

"Proof of the crime of receiving stolen property requires establishing that the property in question was stolen, that the defendant was in possession of it, and that the defendant knew the property to be stolen. [Citations.] A long line of authority, culminating in *People v. McFarland* (1962) 58 Cal.2d 748 . . . establishes that proof of knowing possession by a defendant of recently stolen property raises a strong inference of the other element of the crime: the defendant's knowledge of the tainted nature of the property. This inference is so substantial that only 'slight' additional corroborating evidence need be adduced in order to permit a finding of guilty. [Citation.]" (*People v. Anderson* (1989) 210 Cal.App.3d 414, 420-421.)

Further, there is no bright line between "recent" and "stale" periods of time. Instead, a longer period of time merely weakens the inference of knowledge. (See, e.g., *People v. Anderson, supra,* at pp. 421-422 [inference applied where property found in defendant's possession four and a half months after it was stolen; *People v. Lopez* (1954) 126 Cal.App.2d 274, 278 [inference applied even though property found in defendant's possession was stolen nine months earlier].)

Here, circumstantial evidence of knowledge meets the minimum threshold to sustain the conviction. The ATV was received by Fraley in a disassembled condition and was kept that way in his private yard when it was found by law enforcement. He neither received a pink slip nor registered the vehicle for the purported reasons that it had an up-to-date road sticker and he never got pink slips for these types of vehicles. Fraley had received the item about three months earlier from Germaine Maca who would occasionally stop by his home, trying to sell various items. Maca sold a firearm to Fraley's roommate, also accompanied by a bill of sale, at or about the same time. The very nature of Maca's business--traveling from home to home with a potpourri of items for sale--warrants suspicion. While Fraley paid $350 for the ATV, which he testified was a fair price, he also testified he was suspicious that the ATV was stolen, causing him to ask Maca whether it was stolen. Rather than produce a receipt or any other document stating his legitimate possession of the ATV (or at least verbally saying how he got it), Maca simply denied it was stolen and provided a bill of sale for the transaction of sale to Fraley from him. Fraley testified that he never presented his receipt to law enforcement, that he later gave it to his attorney. A jury could reasonably conclude from the evidence that Fraley bought the ATV knowing it came into Maca's possession after having been stolen; the bill of sale failed to address Fraley's admitted suspicion of how Maca got the ATV.

DISPOSITION

The judgment is affirmed.